a state may constitutionally restrain unsound banks from doing business, or may require a deposit of securities for the safety of note holders or depositors. *Commonwealth* v. *Farmers & Mechanics Bank*, 21 Pick. (Mass). 542; *Medill* v. *Collier*, 16 Oh. St. 599. The Oklahoma statute, however, merges the required deposit into a common fund for the security of depositors in any insolvent bank; so it may be objected that a bank which remains solvent is unjustly deprived of property. The answer is that both strong and weak banks may become insolvent, and all insolvent banks will receive equal treatment in respect to the common fund. See *State* v. *Richcreek*, 167 Ind. 217. The constitutionality of early statutes requiring a common guaranty fund seems to have been accepted without question. See *Elwood* v. *Vermont*, 23 Vt. 701.

PROFITS À PRENDRE — PROFIT APPURTENANT CLAIMED WITHOUT STINT. — In defense to an action of trespass on a non-tidal stream belonging to the plaintiff, the defendant claimed a right from time immemorial, vested in the tenants of a certain manor, to fish on the property without stint and for commercial purposes. *Held*, that the court will not presume a grant of such a right. *Lord Chesterfield* v. *Harris*, [1908] 2 Ch. 397.

A profit *à prendre* may be appurtenant to land. *Huntington* v. *Asher*, 96 N. Y. 604. Or it may be held in gross, so as to be assignable. *Welcome* v. *Upton*, 6 M. & W. 536. And, so it would seem, may a use without stint. See *Bailey* v. *Stevens*, 12 C. B. (N. S.) 91. But it is doubtful whether an easement in gross may be required. *Mayor, etc., of New York* v. *Law*, 125 N. Y. 380. *Contra*, *Rangeley* v. *Midland Railway Co.*, L. R. 3 Ch. 306. It follows that an easement not connected with the use of the dominant tenement cannot pass with that tenement. *Ackroyd* v. *Smith*, 10 C. B. 164. Such an easement would be an anomaly; for it would be in effect personal and yet treated as appurtenant to land. This same reasoning, applied to the present case, shows the ground for refusing to uphold a use claimed as appurtenant which is without stint and therefore unlimited by the dominant estate. Even though an easement may be held in gross it must be claimed as in a man and his ancestors, not as annexed to land. For if a right is claimed as annexed to land it must be measured by the size and want of the estate to which it is appurtenant. See 2 Bl. Com. 265.

PUBLIC OFFICERS — RESIGNATION — WITHDRAWAL OF RESIGNATION. — A sheriff tendered his resignation to the board of county commissioners to take effect at a designated future day. The commissioners accepted it. *Held*, that the sheriff may, nevertheless, withdraw the resignation before the day appointed. *Ryan* v. *Murphy*, 97 Pac. 391 (Nev.).

For a discussion of the principles involved, see 19 HARV. L. REV. 304.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — AMERICAN TOBACCO COMPANY'S CASE. — The defendants were engaged in buying raw material, manufacturing, and selling the product beyond their state lines. Each owned many factories outright and controlled many through stock ownership, and they were together under affiliated managements. *Held*, that each defendant is a combination in restraint of trade under § 1 of the Sherman Act. *U. S.* v. *American Tobacco Co.*, 40 N. Y. L. J. 691 (C. C. A., S. D. N. Y., Nov. 7, 1908). See NOTES, p. 216.

RIGHT OF PRIVACY — CONSTITUTIONALITY OF STATUTE FORBIDDING UNAUTHORIZED USE OF NAME OR PORTRAIT FOR ADVERTISING PURPOSES. — A statute gave to a person whose name or portrait was used by another for advertising or trade purposes, without written consent, an equitable action to restrain such use, authorized an award of exemplary damages against the defendant if he shall have knowingly used the name or portrait in the manner declared unlawful by the act; and made such use of another's name or portrait a misdemeanor. *Held*, that the statute is not unconstitutional. *Rhodes* v. *The Sperry & Hutchinson Co.*, 40 N. Y. L. J. 494 (N. Y., Ct. App., Oct. 23, 1908).

This statute was directly aimed at a much criticized decision of the New York court which denied any remedy in such cases. *Roberson* v. *Rochester, etc., Co.*,

171 N. Y. 538. For a discussion of that case, see 15 HARV. L. REV. 227; 16 HARV. L. REV. 72. For a discussion of the general principles of the right of privacy, see 4 HARV. L. REV. 193–220 18 HARV. L. REV 625; 21 HARV. L. REV. 63.

SALES — BILL OF LADING — LIABILITY OF ASSIGNEE FOR VENDOR'S BREACH OF CONTRACT. — A vendor shipped cotton under a contract warranting its quality. He took an order bill of lading, attached to it a draft on the vendee, and sold the draft to the A bank. The vendee paid the draft and obtained the bill of lading. Later he sued the bank for a breach of the warranty of quality. *Held*, that he cannot recover. *Mason* v. *Nelson*, 62 S. E. 625 (N. C.).

This case overrules a previous decision in the same jurisdiction which was criticized in 14 HARV. L. REV. 159. For a discussion of similar cases, see 16 HARV. L. REV. 292.

STATUTE OF FRAUDS — SALES OF GOODS, WARES, AND MERCHANDISE — GOODS ALREADY IN POSSESSION OF VENDEE. — The defendant, having in his possession certain mill culls belonging to the plaintiff, made an oral contract to buy them. The defendant kept silence for five days and then repudiated the contract. *Held*, that the plaintiff cannot recover on the contract. *Godkin* v. *Weber*, 117 N. W. 628 (Mich.).

The mere fact that the vendee is already in possession of goods does not constitute an acceptance and receipt which will take a contract of sale out of the seventeenth section of the Statute of Frauds. *Silkman Lumber Co.* v. *Hunholz*, 132 Wis. 610. There must be in addition some conduct making the buyer's possession inconsistent with anything but ownership. *Matter of Hoover*, 33 Hun (N. Y.) 553. Whether such conduct is shown is a question of fact for the jury. *Dorrey* v. *Pike*, 50 Hun (N. Y.) 534. But the evidence must be clear and unequivocal. *Lillywhite* v. *Devereux*, 15 M. & W. 285. The courts have gone far in holding that there is no evidence. See *Matter of Hoover*, *supra*. In the present case retention of the goods for five days before repudiation of the contract is held to be no evidence. Where the vendor has delivered possession to the vendee after the contract, retention is evidence of acceptance, for the vendee has no right to retain unless in pursuance of the agreement. *Gilliat* v. *Roberts*, 19 L. J. Ex. 410. But where the vendee had possession before the contract, his possession afterwards is not inconsistent with the former relation of the parties.

TAXATION — PROPERTY SUBJECT TO TAXATION — WATER POWER. — A owned land in Massachusetts on which water power was generated and controlled to work his mill in Rhode Island. The water power was assessed for taxation in Massachusetts, and A petitioned to abate this tax on the ground that the water power was not taxable in Massachusetts. *Held*, that he is not entitled to any abatement. *Blackstone Mfg. Co.* v. *Town of Blackstone*, 85 N. E. 880 (Mass.).

As a general rule realty is taxed where it is situated. See *Potter* v. *Orange*, 62 N. J. L. 192. An apparent though not a real exception exists in the taxation of water power. Thus, an owner of land may be taxed on his use of water power which is generated on other land without the taxing jurisdiction. *Matter of Hall*, 116 N. Y. App. Div. 729. And the same water power is also taxed where generated although applied elsewhere. *Winnipiseogee, etc., Mfg. Co.* v. *Gilford*, 64 N. H. 337. In the first case the use of the water power is an element of value in the assessment of the property taxed, as in any other easement. In the second case the capacity of the land to render other land more valuable by providing water power is obviously to be considered in its taxation. See *Quinebaug Reservoir Co.* v. *Union*, 73 Conn. 294. In each case the value of the realty is enhanced by connection with the water power, and the realty is therefore taxed at a higher rate. See *Amoskeag Mfg. Co.* v. *Concord*, 66 N. H. 562. Thus, although the water power is a distinct element in assessment for taxation it is not a distinct subject of taxation. Decisions opposed to the main case have overlooked this distinction. *Union Water Power Co.* v. *City of Auburn*, 90 Me. 60.